



UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/853,422	05/09/97	HULSE	J 75657

LEYDIG VOIT & MAYER  
180 NORTH STETON  
TWO PRUDENTIAL PLAZA/SUITE 4900  
CHICAGO IL 60601-6780

QM31/0708

EXAMINER

DAWSON, G

ART UNIT	PAPER NUMBER
3731	5

DATE MAILED: 07/08/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>08/853,422</b>	Applicant(s) <b>Hulse et al</b>
	Examiner <b>Glenn Dawson</b>	Group Art Unit <b>3731</b>

Responsive to communication(s) filed on Apr 13, 1998

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-22 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) 21 and 22 is/are allowed.

Claim(s) 1-8, 14, and 16-20 is/are rejected.

Claim(s) 9-13 and 15 is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

**GLENN K. DAWSON**  
**PRIMARY EXAMINER**  
**60**

**-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --**

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***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

2. Claims 1,2,4-8 and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by LINDSAY-5713909. LINDSAY et al discloses a vacuum extractor having a cup with a soft lip having a proximal internal edge which ends adjacent the open end of the cup. See fig. 6.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over LINDSAY-'909. LINDSAY discloses the device as claimed with the exception of the amount of lip extension and the adhesive attaching the lip to the cup. The amount of lip extension is an obvious design choice as the thickness of the material of the lip could be made in the claimed

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range. It also would have been obvious to attach the lip to the cup with an adhesive in order to make sure it does not come off during use.

6. ***Allowable Subject Matter***

7. Claims 9-13 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 21-22 are allowed.

***Response to Amendment***

Applicant's arguments filed 04-13-98 have been fully considered but they are moot in view of the new grounds of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Glenn Dawson at telephone number (703) 308-4304. Examiner Dawson can normally be reached on Monday through Thursday from 7:00 AM to 5:30 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, examiner Dawson's supervisor, MICHAEL BUIZ, can be reached at (703) 308-0871. The fax number for Group 3300 is (703) 305-3590 or 3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 3300 receptionist at (703) 308-0858.

GKD  
July 2, 1998

GLENN K. DAWSON  
PRIMARY EXAMINER

*Glenn Dawson*